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The Director

Assistant General Counsel

14 June 1948

1. In connection with [] work, the attached bill has been drafted and introduced with the approval of the Armed Services, the State Department, and CIA.

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2. It is now before the Judiciary Committees of the Senate and House, and an attempt is to be made to get it through at this Session. The burden is being carried by Mr. Larkin, Special Assistant to the Secretary of Defense.

3. All major objections to the bill have been met in the present draft, after a series of conferences. The State Department has withdrawn its objection to the term "foreign government", and the Federal Communications Commission has withdrawn its opposition as well. The original objections of the Department of Justice have largely been met and we have had no comments from the FBI on this version, although it is believed they will not like it. Sen. Homer Ferguson (R., Mich.), key member of the Senate Judiciary Committee, has expressed great interest in the bill, and Mr. Larkin, [] and myself conferred with him on Saturday, 12 June, at some length.

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4. At Sen. Ferguson's request, the attached memorandum unsigned has been drafted by Mr. Larkin, [] and myself and made available to Sen. Ferguson for his confidential use in Committee. In addition, additional disclosures have been made to him and to Sen. Wiley, Chairman of the Judiciary Committee, in order that the importance and seriousness of the attached bill would become obvious. They have readily agreed, however, that further disclosures cannot be publicly made.

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Walter L. Pforzheimer

Attachments WLPforzheimer:blc

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CONFIDENTIALMEMORANDUM

June 12, 1948

SUBJECT: Amendment to Section 605 of the Communications Act of 1934.
(S. 2833)

Section 605 of the Communications Act of 1934, in brief, prohibits any person from divulging, publishing, etc., the contents, substance, etc., of any interstate or foreign communication by wire, and also prohibits any person not authorized by the sender from intercepting any communication and divulging or publishing the existence, contents, substance, purport and effect or meaning of such intercepted communication.

By virtue of the restrictions contained in the above Act, the intelligence services of the government are not permitted to intercept any radio or wire messages, foreign or domestic, nor to receive copies of any communications from any carrier. In this connection, it should be pointed out that the United States Government is in a particularly disadvantageous position as compared to other governments. Practically all foreign governments either control or operate their communications systems and, as a result, have access to copies of any and all communications passing into, out of or within the territories controlled by those governments. The communication system of the United States is privately controlled and, thus, by virtue of the restrictions of Section 605 of the Communications Act of 1934, the United States Government is not in the same position as other foreign governments.

CONFIDENTIAL

CONFIDENTIAL

2

In addition, it should be pointed out that, by the provisions and agreements of the International Telecommunications Convention of Madrid (1932), to which the United States became a party signatory in 1934, and the International Telecommunications Convention signed at Atlantic City, New Jersey, on 2 October 1947 and ratified by the United States Senate in June of 1948, the right was specifically reserved to all contracting governments to intercept the transmission of any private wire or radio telegram which might appear dangerous to the security of the state.

In spite of such agreements and such rights which accrue to the United States as a signatory, by virtue of our own internal laws -- to wit: Section 605 -- the United States cannot avail itself of the privileges set forth in these international conventions, which privileges are availed of by all other foreign governments.

It is obvious that, for intelligence purposes, there is an urgent need that the restrictions of Section 605 be relaxed under appropriate restrictions in the interest of national security. It is also obvious that the foreign intelligence services of the United States should no longer operate at as great a disadvantage as they do at present, provided that this can be accomplished within the framework of domestic civil liberties.

The purpose of the proposed amendment (S. 2033) is to rectify the restrictions under which our intelligence services operate, without invading the rights of American citizens. In order to accomplish this, the proposed amendment provides for a relaxation in the interest of national security

CONFIDENTIAL

CONFIDENTIAL

of the restrictions against interception, receipt and utilization of the contents of communications by wire or radio of any foreign government. It is to be stressed that the relaxation is limited to communications of foreign governments. The term "foreign government" is carefully defined in the proposed amendment, and, while by its definition it would limit the communications which could be intercepted, it is considered adequate for the purposes of the foreign intelligence activities of the United States.

It is felt that the provision limiting the interception, receipt and utilization of communications of foreign governments only is not such a relaxation of the restrictions of Section 605 as will invade the rights and civil liberties of private citizens in the United States. In order to clearly emphasize that civil liberties of United States citizens are not violated, the following language is provided on page 2, lines 8 to 10, of S. 2833:

".....provided that nothing in this amendment shall be construed to authorize the interception of interstate and intrastate telephone communications."

It is recognized that previous attempts to relax the provisions of Section 605 have been successfully opposed because they might have resulted in undue violations of the civil rights of American citizens or permitted the practice of wire tapping. The present amendment does not permit these practices, and, for this reason, the interception of interstate and intrastate telephone communications is not authorized and remains specifically prohibited by the terms of this amendment. In this connection, it should be noted that attacks upon previous attempts to relax the restrictions of

CONFIDENTIAL

CONFIDENTIAL

4

Section 605 have all centered upon attempts to monitor, listen in on or tap private telephone conversations, which are the principal vehicle of private communication among citizens of the United States. However, because foreign governments and embassies use both telegraph and teletype communications within the United States in order to communicate with sub-agencies of such governments, such as Consulates, U.N. Delegations, and the like, it is felt that the prohibition contained on page 2, lines 8 through 10, of S. 2833, quoted above, should not be expanded beyond telephone communications. It is felt that the safeguards provided for American citizens are sufficient in that there can be intercepted only the telegraph and teletype communications of foreign governments, and there can be no interception, even in the case of foreign governments, of any sort of interstate or intrastate telephone communications. While the restriction as to telephone communications will limit intelligence activities, it is felt that such limitation is warranted and proper in order to guarantee the civil liberties of American citizens within the letter and spirit of the Supreme Court decisions on this point.

In recapitulation, it is pointed out that the proposed amendment does not permit the interception of communications, domestic or foreign, between American citizens; nor the interception of American commercial messages, even in commercial code; nor the interception of international communications of American businessmen or firms; nor the interception of communications between American newspapers and their correspondents and offices abroad, nor in any way impinge upon the rights and freedoms of the

CONFIDENTIAL

CONFIDENTIAL

5

press. Furthermore, it should be stressed that the proposed amendment in no way permits the interception of interstate or intrastate telephone communications of any nature, nor does it relax existing prohibitions against "wire tapping" of such communications.

CONFIDENTIAL